



# State of New Hampshire

## PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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MARYLIN PIKE

Complainant

v.

COUNTY OF STRAFFORD

Respondent.  
\_\_\_\_\_

CASE NO. M-0568

DECISION NO. 84-55

### APPEARANCES

#### Representing Marylin Pike

Anthony McManus, Esq.

#### Representing the County of Strafford

Edward E. Shumaker, III, Esq.

#### Also present

Melody M. Jones

Floyd Pike

Amber Pike

### BACKGROUND

On January 6, 1984, Marylin Pike, a former employee of Strafford County, filed an affidavit with PELRB thru her attorney complaining of violations of RSA 273-A:5.

Mrs. Pike alleged that she had been employed by the Strafford County up to July 8, 1983 but on that day she had been "terminated", paid for that week's work plus given four-weeks pay marked "severance". Mrs. Pike claimed that the manner of her termination violated the collective bargaining agreement in force in a number of particulars. She subsequently filed a grievance against the employer (Strafford County) as provided under the agreement.

The County, by its administrative aide, Terence Casey, responded that the County had not violated either the contract or RSA 273-A and pointed out that the collective bargaining agreement provided a grievance process, which had been utilized in this and other cases, and did provide for final and binding arbitration. The County asserted that the union representing Marylin Pike had chosen not to pursue her case to arbitration, that the matter has been settled under the contract

and, therefore, no basis for PELRB action existed. The County requested the case be dismissed.

A hearing was scheduled, postponed and eventually held on April 19, 1984 at PELRB offices in Concord, N.H. with all parties represented.

#### HEARING ON MOTION TO DISMISS

At the hearing, the County renewing their January 19, 1984 pleadings, filed a motion to dismiss the case arguing that the allegations of Marilyn Pike were not properly before the PELRB (also denying such allegations) because they "...were in fact raised and resolved in the dispute resolution mechanism agreed to by the parties in the agreement in question". (County) And further pointing out that PELRB had consistently refused to review the outcome of the grievance process unless that process itself had been interfered with. The County further argued that grievances were filed, they were processed to certain stages in the grievance procedure and that the union decided not to pursue the matter to arbitration. The County pointed out that the New England Health Care Employees Union No. 1199 had pursued four separate arbitration cases recently and that the process was clearly a "workable grievance procedure", carved out by the employer (County) and the exclusive representative under the Act (NEHCE 1199), and it was the duty and obligation of the union under the contract to make decisions about pursuing particular cases to arbitration. The union did make such a judgment in this case and, therefore, no grounds for appeal to PELRB existed.

The Board decided to hear only arguments on the motion to dismiss and granted employee's counsel permission to file a brief in objection to the motion to dismiss, also giving the County's attorney three subsequent days to file a rebuttal brief (only).

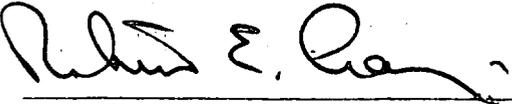
In his brief against the motion to dismiss, employee's counsel argued that the statute specifically allowed for appeals to PELRB if the contract was violated and such was the case here, requiring a hearing on the merits. He further argued that the union did not represent Pike adequately when, at two different levels, they decided not to press for binding arbitration, thus denying Pike completion of the grievance procedure "through circumstances not within her control" (Littleton Teachers Association v. Littleton School Board, Decision No. 82-21). Employee's counsel further argued that the union's exclusive right to representation of employees was not intended to bestow unlimited discretion on unions "...to deprive injured employees of all remedies for breach of contract" (Vaca v. Sipes, 1967).

#### RULINGS OF LAW

The PELRB must find that the union, barring evidence of distortion of the grievance procedure, has the right and obligation to act responsibly in determining which grievance to pursue to arbitration. As "exclusive representative" of the bargaining unit employees this must be the union's right and duty acting lawfully. PELRB finds no evidence of an unfair labor practice here. Although the Board agrees with counsel that the union cannot exercise its rights in a way to deprive the employees of their right to an appeal or hearing, it cannot agree that in this instance the controversy is within PELRB jurisdiction, although the employee may seek another jurisdiction.

DECISION

The motion to dismiss is hereby granted. No other relief is issued.

  
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ROBERT E. CRAIG, Chairman

Signed this 22nd day of June, 1984.

By unanimous vote. Chairman Craig presiding. Members Richard W. Roulx, Russell F. Hilliard and Seymour Osman present and voting. Also present, Evelyn C. LeBrun, Executive Director.